

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	:	
	:	Chapter 11
THE IT GROUP, INC., et al.,	:	
Debtors.	:	Bankruptcy Case No. 02-10118-MFW
_____	:	_____
JOHN ACCARDI, et al.,	:	
Appellants,	:	
v.	:	Civil Action No. 04-146-JJF
	:	CONSOLIDATED
IT CORPORATION, et al.,	:	
Appellees.	:	
_____	:	
ROCHELLE BOOKSPAN,	:	
Appellant,	:	
v.	:	
THE IT GROUP, INC, et al.,	:	
Appellees.	:	

MEMORANDUM ORDER

Presently before the Court is a request by Appellant, Rochelle Bookspan, to amend her Opening Brief and the relief requested on appeal to include reversal of the Bankruptcy Court's dismissal of her second amended counterclaims and reversal of the Final Order of the Bankruptcy Court granting judgment to the Appellees' vis-a-vis their complaint for declaratory relief. (D.I. 16, n.6). Appellant makes her request to amend in a footnote in her Motion To Consolidate.

The Debtors have filed a response to the request to amend

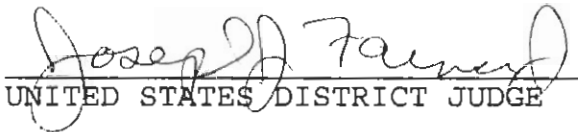
contending that the request is an improper attempt to add new issues to the appeal. The Debtors contend that any new issues have been waived pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, which gives an appellant ten (10) days after filing a notice of appeal to file a statement of the issues to be presented on appeal. If the issues are not waived, the Debtors request the opportunity to file a Supplemental Answer Brief to address the issues.

If an issue is not included in the designation of the issues presented on appeal, the issue is waived. Interface Group-Nevada, Inc. v. Trans World Airlines, Inc., 145 F.3d 124, 132-133 (3d Cir. 1998). Pursuant to Federal Rule of Bankruptcy Procedure 8006, Appellant had ten days after filing her notice of appeal to file a statement of the issues to be presented in that appeal. Pursuant to Federal Rule of Bankruptcy Procedure 8010, the Appellant's brief is to contain an argument section discussing all the issues raised on appeal.

It appears to the Court based on a review of Appellant's Opening Brief and the designation of issues raised on appeal, that Appellant did not raise the issues she now raises in footnote 6 of her Motion To Consolidate. Appellant suggests that her counterclaims are substantially the same as the claims in the complaint in the related action in Accardi, et al. v. IT Corp., et al., Adv. No. 02-05486 (the "Accardi appeal"). To the extent

the issues in Appellant's counterclaim are the same as the issues in the Accardi complaint, the Court will deem Appellant's appeal to be amended to include a review of the dismissal of her counterclaims. However, to the extent that her counterclaims differ from the issues raised in Accardi or otherwise present new issues, they have not been briefed or designated on appeal, and therefore, the Court concludes that they have been waived.

NOW THEREFORE, IT IS HEREBY ORDERED this 31 day of March 2005, that the request to amend her opening brief and to add new issues on appeal filed by Rochelle Bookspan contained in her Motion To Consolidate (D.I. 16, n.6) is GRANTED to the extent that Bookspan's counterclaims are identical to the issues raised in the Accardi appeal and DENIED in all other respects.


UNITED STATES DISTRICT JUDGE